

heading "MILITARY CONSTRUCTION, ARMY" and available for a dining hall project at Forward Operating Base Dwyer is hereby increased by \$4,400,000.

(2) The amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, ARMY" and available for a dining hall project at Forward Operating Base Maywand is hereby reduced by \$4,400,000.

(b)(1) The amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, ARMY" and available for a dining hall project at Forward Operating Base Wolverine is hereby increased by \$2,150,000.

(2) The amount appropriated or otherwise made available by this title under the heading "MILITARY CONSTRUCTION, ARMY" and available for a dining hall project at Forward Operating Base Tarin Kowt is hereby reduced by \$2,150,000.

SEC. 402. Amounts appropriated or otherwise made available by this title are designated as being for overseas deployments and other activities pursuant to sections 401(c)(4) and 423(a)(1) of S. Con. Res. 13 (111th Congress), the concurrent resolution on the budget for fiscal year 2010.

#### TITLE V

#### DEPARTMENT OF VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION MEDICAL SERVICES

For necessary expenses for furnishing, as authorized by law, inpatient and outpatient care and treatment to beneficiaries of the Department of Veterans Affairs and veterans described in section 1705(a) of title 38, United States Code, including care and treatment in facilities not under the jurisdiction of the Department, and including medical supplies and equipment, food services, and salaries and expenses of healthcare employees hired under title 38, United States Code, and aid to State homes as authorized by section 1741 of title 38, United States Code; \$37,136,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011: Provided, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall establish a priority for the provision of medical treatment for veterans who have service-connected disabilities, lower income, or have special needs: Provided further, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs shall give priority funding for the provision of basic medical benefits to veterans in enrollment priority groups 1 through 6: Provided further, That, notwithstanding any other provision of law, the Secretary of Veterans Affairs may authorize the dispensing of prescription drugs from Veterans Health Administration facilities to enrolled veterans with privately written prescriptions based on requirements established by the Secretary: Provided further, That the implementation of the program described in the previous proviso shall incur no additional cost to the Department of Veterans Affairs: Provided further, That for the Department of Defense/Department of Veterans Affairs Health Care Sharing Incentive Fund, as authorized by section 8111(d) of title 38, United States Code, a minimum of \$15,000,000, to remain available until expended, for any purpose authorized by section 8111 of title 38, United States Code.

#### MEDICAL SUPPORT AND COMPLIANCE

For necessary expenses in the administration of the medical, hospital, nursing home, domiciliary, construction, supply, and research activities, as authorized by law; administrative expenses in support of capital policy activities; and administrative and legal expenses of the Department for collecting and recovering amounts owed the Department as authorized under chapter 17 of title 38, United States Code,

and the Federal Medical Care Recovery Act (42 U.S.C. 2651 et seq.); \$5,307,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011.

#### MEDICAL FACILITIES

For necessary expenses for the maintenance and operation of hospitals, nursing homes, and domiciliary facilities and other necessary facilities of the Veterans Health Administration; for administrative expenses in support of planning, design, project management, real property acquisition and disposition, construction, and renovation of any facility under the jurisdiction or for the use of the Department; for oversight, engineering, and architectural activities not charged to project costs; for repairing, altering, improving, or providing facilities in the several hospitals and homes under the jurisdiction of the Department, not otherwise provided for, either by contract or by the hire of temporary employees and purchase of materials; for leases of facilities; and for laundry services, \$5,740,000,000, plus reimbursements, which shall become available on October 1, 2010, and shall remain available through September 30, 2011.

#### TITLE VI

#### GENERAL PROVISIONS

SEC. 601. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 602. Such sums as may be necessary for fiscal year 2010 for pay raises for programs funded by this Act shall be absorbed within the levels appropriated in this Act.

SEC. 603. None of the funds made available in this Act may be used for any program, project, or activity, when it is made known to the Federal entity or official to which the funds are made available that the program, project, or activity is not in compliance with any Federal law relating to risk assessment, the protection of private property rights, or unfunded mandates.

SEC. 604. No part of any funds appropriated in this Act shall be used by an agency of the executive branch, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or film presentation designed to support or defeat legislation pending before Congress, except in presentation to Congress itself.

SEC. 605. All departments and agencies funded under this Act are encouraged, within the limits of the existing statutory authorities and funding, to expand their use of "E-Commerce" technologies and procedures in the conduct of their business practices and public service activities.

SEC. 606. None of the funds made available in this Act may be transferred to any department, agency, or instrumentality of the United States Government except pursuant to a transfer made by, or transfer authority provided in, this or any other appropriations Act.

SEC. 607. Unless stated otherwise, all reports and notifications required by this Act shall be submitted to the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the House of Representatives and the Subcommittee on Military Construction, Veterans Affairs, and Related Agencies of the Committee on Appropriations of the Senate.

SEC. 608. (a) Notwithstanding any other provision of this Act and except as provided in subsection (b), any report required to be submitted by a Federal agency or department to the Committee on Appropriations of either the Senate or the House of Representatives in this Act shall be posted on the public website of that agency upon receipt by the committee.

(b) Subsection (a) shall not apply to a report if—

(1) the public posting of the report compromises national security; or

(2) the report contains proprietary information.

SEC. 609. None of the funds made available under this Act may be distributed to the Association of Community Organizations for Reform Now (ACORN) or its subsidiaries.

This Act may be cited as the "Military Construction and Veterans Affairs and Related Agencies Appropriations Act, 2010".

#### AMERICAN EDUCATION WEEK

Ms. CANTWELL. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of S. Res. 353 and the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 353) supporting the goals and ideals of "American Education Week."

There being no objection, the Senate proceeded to consider the resolution.

Ms. CANTWELL. I ask unanimous consent that the resolution be agreed to, the preamble be agreed to, the motions to reconsider be laid upon the table, with no intervening action or debate, and any statement related to the resolution be printed in the RECORD.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 353) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

#### S. RES. 353

Whereas the National Education Association has designated November 15 through November 21, 2009, as the 88th annual observance of "American Education Week";

Whereas public schools are the backbone of democracy in the United States, providing young people with the tools needed to maintain the precious values of freedom, civility, and equality in our Nation;

Whereas by equipping young people in the United States with both practical skills and broader intellectual abilities, public schools give young people hope for, and access to, a productive future;

Whereas people working in the field of public education, including teachers, higher education faculty and staff, custodians, substitute educators, bus drivers, clerical workers, food service professionals, workers in skilled trades, health and student service workers, security guards, technical employees, and librarians, work tirelessly to serve children and communities throughout the Nation with care and professionalism; and

Whereas public schools are community linchpins, bringing together adults, children, educators, volunteers, business leaders, and elected officials in a common enterprise: Now, therefore, be it

Resolved, That the Senate—

(1) supports the goals and ideals of "American Education Week"; and

(2) encourages the people of the United States to observe "American Education Week" by reflecting on the positive impact of all those who work together to educate children.

#### APPOINTMENT

The PRESIDING OFFICER. The Chair, on behalf of the majority leader,

pursuant to Public Law 105-83, announces the appointment of the following individual to serve as a member of the National Council of the Arts: the Honorable CLAIRE MCCASKILL of Missouri.

#### ORDERS FOR THURSDAY, NOVEMBER 19, 2009

Ms. CANTWELL. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 9:30 a.m. tomorrow, Thursday, November 19; that following the prayer and pledge, the Journal of proceedings be approved to date, the morning hour be deemed expired, the time for the two leaders be reserved for their use later in the day, and the Senate proceed to a period of morning business for 1 hour, with Senators permitted to speak therein for up to 10 minutes each, with the time equally divided and controlled between the two leaders or their designees, with the majority controlling the first half and the Republicans controlling the final half; that following morning business, the Senate proceed to the consideration of Calendar No. 190, S. 1963, the Caregivers and Veterans Omnibus Health Services Act Of 2009, as provided for under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

#### PROGRAM

Ms. CANTWELL. Mr. President, at 2:30 p.m. tomorrow the Senate will proceed to a series of three rollcall votes. The votes will be on the confirmation of the nomination of David Hamilton to be a U.S. circuit judge for the Seventh Circuit; in relation to the Coburn amendment No. 2785, relating to spending priorities; and passage of S. 1963, the Caregivers and Veterans Omnibus Health Services Act, as amended, if amended.

Finally, I ask unanimous consent that following the remarks of Senator SESSIONS, Senator HARKIN, and Senator ALEXANDER, the Senate adjourn under the previous order.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Alabama is recognized.

#### NOMINATION OF DAVID HAMILTON

Mr. SESSIONS. Mr. President, I thank Senator CANTWELL. I appreciate her courtesy. I just want to share a few remarks tonight.

We are now postcloture on the nomination of Judge David Hamilton to the circuit court of appeals. Cloture is a procedure in the Senate generally used to end a prolonged debate. The majority leader, Senator REID, filed cloture on Judge Hamilton, however, before there had been even 1 hour of debate on the nomination. The cloture motion was filed before I or any of my col-

leagues had time set aside and had the opportunity to debate this matter.

Judge Hamilton's judicial philosophy and record as a district judge were problematic. There are important matters involved considering the fact that President Obama has nominated him to serve on the Court of Appeals for the Seventh Circuit. It is worthy of serious consideration, this lifetime appointment.

Yesterday, 28 Senators joined me in voting against cloture. I believe they voted no on cloture for a number of reasons. The first is the one I have just mentioned. Cloture is generally reserved to end a prolonged debate, and Senator REID filed cloture without any debate, before debate had really begun.

The second is that Judge Hamilton's judicial philosophy is outside the mainstream—I think well outside the mainstream. As I have said before, if a judge is not committed to following the law whether they like it or not, then that person is not qualified to be a judge. They may be a good advocate, but a judge must, by definition, be impartial.

I think there will be more people voting against Judge Hamilton's nomination than voted against cloture—the 29 who voted yesterday. I think we need to spend some time talking about his record and his judicial philosophy.

I do not have anything against Judge Hamilton. I understand he may be a fine person, and I really mean that. But there is afoot in this country a philosophy of judging, an approach to law that I think is dangerous and strikes at the very heart of the classical American judicial philosophy and legal system that has served us so well. So that is what this is about. If judges have the wrong philosophy as they approach the bench about how they should go about deciding cases, then that can disqualify them.

As Senators, we each have a right to express our opinion on whether we believe a nominee is qualified and should be confirmed or not elevated to a higher court, but the American people expect we will not misrepresent the facts. Let's be fair to this nominee, and let's not in any way misrepresent who he is and what he did and what his philosophy is. I intend to be fair to him. I think any nominee is entitled to that. Even though I might be a critic, I should not be inaccurate in what I say.

In this case, I think the facts have been misrepresented by others, and I want to correct the record on some of the issues, where it has been suggested that I or others have been incorrect or unfair in our criticism. Accuracy goes both ways. If you are for a judge and want to move him forward, OK, let's be accurate. Those who are opposed to him, you must be restrained and accurate also.

Yesterday on the floor of the Senate, the majority leader, Senator REID, invoked the Golden Rule. He said that when he became majority leader, he sought to "treat [President Bush's] ju-

dicial nominees the way they would want them treated if the roles were reversed."

Let's take a look at the way President Bush's judicial nominees were treated by the Democratic majority. Senator REID complained that Judge Hamilton, the judge before us tonight—tomorrow—waited 166 days for this vote. If Republicans followed Senator REID's version of the Golden Rule, would he have been confirmed earlier? No. Judge Hamilton would have waited at least another year and a half before he received consideration on the Senate floor. That is exactly how President Bush's nominees were treated for the first group of nominees he submitted to the circuit courts.

Priscilla Owen, a fabulous judge at the Supreme Court of Texas, John Roberts, now on the Supreme Court of the United States, and Deborah Cook all waited 2 years before receiving a confirmation vote.

Yesterday Senator REID said:

It's really unfortunate we have to file cloture on a judge.

Really unfortunate that we have to file cloture on a judge? As if this was something that had never been done before. Indeed, during the Bush administration, cloture had to be filed on at least 17 different judicial nominees because Senator REID was leading filibusters himself. The majority leader complains he could not get a time agreement. But he never offered a reasonable amount of time. I believe there were discussions about 30 hours of debate, which was rejected. Senator REID said he was stunned that some people believed there was not enough time to debate the nomination when no debate had been had.

He accused Republicans of not entering into a time agreement. But as I said Monday, Senator REID has a short memory. When Senator REID was in the middle of filibustering Priscilla Owen, Senator BENNETT made a unanimous consent request that the Senate spend 10 hours more debating the nomination and then vote. Senator REID objected. When Senator BENNETT asked how much time would be sufficient to debate the Priscilla Owen nomination, Senator REID responded by saying:

[T]here is not a number of [hours] in the universe that would be sufficient.

Later Senator MCCONNELL sought a time agreement on Judge Owen. Senator REID responded by saying:

We would not agree to a time agreement . . . of any duration.

Yesterday Senator REID said:

The Democratic majority in the Senate confirmed three times as many nominees [under President Bush] as we have been able to confirm in the same amount of time under President Obama.

Senator REID left out the fact that Democrats filibustered more than three times as many nominees under President Bush. Indeed, there were 30 cloture votes on 17 different judicial nominations during the Bush administration. There were 1,044 total votes